October 11, 2002

VIA TELECOPIER TO PLAINTIFF
AND THE COURT AS A COURTESY
& VIA ELECTRONIC SUBMISSION TO
THE COURT AND ALL PARTIES

Honorable Magistrate Judge Cheryl L. Pollak
United States District Court for
the Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Re: NAACP v. ACUSPORT et al.
99 Civ. 7037 (JBW)

Dear Magistrate Judge Pollak:

WeWe write onWe write on behalf of distributors BONITZBROTHERS, INC.; JERRY S SPORTS, INC., D/B/AINC., D/B/A JERRY S SPORT CENTER, NORTHINC., D/B/A JERRY S SPORT CENTER, NO NORTHNORTH EAST, INC.; JENORTH EAST, INC.; JERNORTH EAST, INC.; JERRY S SPORTS, IN OUTDOOROUTDOOR SPORTS HEADQUARTERS, INC.; and SIMMON S GUN SPECIALOUTDOOR SP (collectively,(collectively, Jerry s), to respond to Plaintiff s belat(collectively, Jerry s), to respond to Plain documents. Plaintiff s request to strike certain answers do not affect the Jerry s Defendants.

WeWe ask the Court to enforce its prior oral ruling limiting PlaintiffWe ask the Court to enforce its p againstagainst the JERRY Sagainst the JERRY S defendants to total sales data for the years 1998 throughagainst th providedprovided to Plaintiff previously, without objection. Now, *for the first time*, Plaintiff, Plaintiff wants JERRY toto produce information showing the handgun units soldto produce information showing the handgun units sold (i.e.,(i.e., how many units were(i.e., how many units were sold to each dealer or FFL for by each defendant for each(2000). 2000). This outrageous, *new demand* for *individual* sales should sales should be **rejected** by this Court by itit presents an unbearable burden on the JERRY S defendants. Althougit presents an unbearable burden on t demandsdemands to show total salesdemands to show total sales were burdensome, this new demanddemand iindividualindividual recoindividual records should not be tolerated, when the paper discovery period in this case August 30, 2002, by this Court s Order.

Initially,Initially, we note that Ms.Initially, we note that Ms. BarnesInitially, we note that Ms. Barne defendants, defendants, however the captiondefendants, howeverthe caption todefendants, however the caption

AccordingAccording to the Special Master s Report, basedAccording to the Special Master s Report, based onAc
andand Firearms (BATF), there are approximately 80,000 active Federal Firearmsand Firearms (BATF), there ar
ReportReport at 16.Report at 16. According to BATF publications, thereReport at 16. According to BATF pub
importers,importers, and thousands ofimporters, and thousands of other FFLs. Although the NAACP seeks to e
nuisance *in New York*, the Plaintiff, the Plaintiff has failed to name *any entity* whether a whether a manufacturer
ororor distributor who actuallyor distributor who actually is located in the State of New York. For example, the
thatthat firearm dealers in New York somehowthat firearm dealers in New York somehow improperly permit handg
butbut has not suedbut has not sued any firearm dealer whobut has not sued any firearm dealer who actually distribu
either legally or illegally.either legally or illegally. Thus, the NAACP s claims that an injunction is needed on an
basisbasis are not supported by those actions which basis are not supported by those actions which would, if t
beforebefore a court of competbefore a court of competent juribefore a court of competent jurisdiction, but
jurisdictionjurisdiction of *this court* which the NAACP apparently covets more dearly than obtaining jurisdiction
over any entity within the State of New York who is involved in the firearm industry.

ThisThis background is iThis background is impoThis background is important because Pl
application to this Court dated October 8, 2002, *and and their letter and their letter to us dated October 3, 200*
askedasked for JERRY S all of its acquisition and disposition data. In the past, Plaintiff only sought all
documentsdocuments that reportdocuments that report or are sufficient to disclose the total number of handguns dis
byby defendant. by defendant. by defendant. Plaintiff placed no date or time restriction on such documentation, wh
inin summary form. Itin summary form. It is clear that Plaintiff never objectedin summary form. It is clear tha
asas long as it was sufficient to show theas long as it was sufficient to show the data requested, which it was for the y
Plaintiff has admitted in its application to this court that the information Plaintiff soughtPlaintiff has admitted in its
waswas onlywas only sales data. Total sales data for each individual purchase iswas only sales data. Total sa
fromfrom the acquisition and disposition reports afrom the acquisition and disposition reports and from th
requested.

Now,Now, the NAACP has requested that individual sales data, never before requested,
inin the form of acquisition and dispositionin the form of acquisition and disposition reporin the form of acqui
allegingalleging that aalleging that a past request for this information was not compliedalleging that a past request fo
requestsrequests made by Plaintiff NAACP for the production of documents to the JERRY S defendants, it
isis clear that this new request foris clear that this new request for the acquisition andis clear that this new request
new,new, burdensome, irrelevant discovery requests which call for acquisition and disposition reports or
indindividindividualindividual sales data which were never requested from the JERRY S defendants by the NAA
previously.

ThisThis Court should scrutinize the Plaintiff s counsel s analysis of its need This Court should scr
datadata which appears in adata which appears in a single paragraphdata which appears in a single paragraph of p
WithoutWithout any evidence in admissible form, Plaintiffclaims that because it has FOIA documents from
1989-951989-95 from the BATF (which1989-95 from the BATF (which are summary date for which JERRY S ha
anyany of theany of the various law enforcement agencies who purportedly initiated trace requests),any of the var
entitledentitled to JERRY S sales and/orentitled to JERRY S sales and/or its acquisition and disposition data for th

greatgreat mixing and matching game, for whichgreat mixing and matching game, for which Plaintiffhas provided n thatthat Plaintiff requires date for this entire period in order to maximize the number of yearsthat Plaintiff requires wewe have bothwe have both sales datawe have both sales data and crime gun data covering those sales. Thus, if 19011901 through FOIA1901 through FOIA, Plaintiff1901 through FOIA, Plaintiff would argue that it should l sales, for each and every dealer, from 1901 to 2000!

InIn addition, Plaintiff claims that the time to criIn addition, Plaintiff claims that the time significantsignificant at *three years or less*, yet seeks acquisition and disposition reports which, yet seeks acquis 191989.1989. If, 1989. If, for sake of argument alone, a party distributed handguns in 1989, which result handgunshandguns turning up in trace reports (which do handguns turning up in trace reports (which do not p 1992,1992, what1992, what admissible proof could be offered as to that1992, what admissible proof could be offere thethe same reasoning, if a party distributed handguns in 1995, 1996the same reasoning, if a party distributed hand reportsreports in 1998, 1999 or 2000,reports in 1998, 1999 or 2000, what proof is that of anyreports in 1998, 1999 seeksseeks to obtain data in discovery which is irrelevant to seeks to obtain data in discovery which is irrelevan rejectedrejected because the NAACP seeks injunctiverejected because the NAACP seeks injunctive relief for a pub ofof dollaof dollars in abatement, and for which it is not entitled unless it can show clear and conviof dollars evidence that JERRY S, or others, are creating any public nuisance.

Generally,Generally, for a private party to claim a puGenerally, for a private party to claim a pu plaintiffsplaintiffs showplaintiffs show that a *recent* c condition has caused them to suffer special injury. For ex HooverHoover v. Durkee, 212 A.D.2d 839, 622, 212 A.D.2d 839, 622 N.Y.S.2d, 212 A.D.2d 839, 622 N.Y.S.2d 34 a preliminary injunction and then sought to permanentlya preliminary injunction and then sought to permanently e racewayraceway based upon of the theory of public nuisance. In April 1990,raceway based upon of the theory of pu thethe site. By June 1990, plaintiffsthe site. By June 1990, plaintiffs sought to permanently enjoin the raceway s ope thethe court did find that the raceway was a public nuisance and issued the permanent injunction. However, for our purposes,However, for our purposes, it is importantHowever, for our purposes, it is important condition which plaintiffs soughtcondition which plaintiffs sought to enjoin by means of a preliminarycondition wh its interference with the community.

AtAt the outside, in terms At the outside, in terms of diAt the outside, in terms of discovery per Group,Group, Inc., 281 A.D.2d 449, 722 N.Y.S.2d 35, 281 A.D.2d 449, 722 N.Y.S.2d 35 (2d Dep t 2001), plai adultadult shelter created aadult shelter created a public nuisance because it induced nonresidents to reside in the tow properproper screening or supervision, thereby burdening the town resources and threatening the public safety.safety. safety. Plaintiffs used statistics fromsafety. Plaintiffs used statistics from data produced during discove nuisance.nuisance. These statistics were derived from intake data during a three yearthree year period between J 19951995 and June 1998.1995 and June 1998. Obviously, even a three year period for1995 and June 1998. Obviou therethere should have beenthere should have been a faster response if the parties had special injuries requiringthe for afor a public nuisance. Interestingly,for a public nuisance. Interestingly, the court rejected that claim be establishestablish by clear and convincing evidence a substantial and unreasonableestablish by clear and convincin right.right. Plaintiff s statistics,right. Plaintiff s statistics, in the Court s words, did not raise a material question o

Finally, Plaintiff claims that ifFinally, Plaintiff claims that if theFinally, Plaintiff claims that if the Co for,for, her statisfor, her statistics, from ofor, her statistics, from other sources may result in delays in the ar findings. findings. Applicationfindings. Application at 6. This Court should permit parties tofindings. Applicati ForFor Plaintiff to acknowledge that it has For Plaintiff to acknowledge that it has other souFor Plaintiff to ac time,time, is an admission that it does not need this new information.time, is an admission that it does not discoverydiscovery order which will require JERRY S and othersdiscovery order which will require JERRY S and fromfrom their computer systems, or elsewhere withinfrom their computer systems, or elsewhere within their reco even as far back as to 1989, which may not be currently in use, is unreasonable and improper.

ThisThis CourtThis Court should simply reject Plaintiff s belated requests because ofThis Court sho cuttingcutting ocutting off paper discovcutting off paper discovery on August 30, 2002. However, if the Court Plaintiff sPlaintiff s requests, the Court should then reject thPlaintiff s requests, the Court should then reject evidence,evidence, in admissible form, concluding that the NAACPevidence, in admissible form, concluding that the eveneven from 1997, to show by clear and convincingeven from 1997, to show by clear and convincing evidencee areare causingare causing a public nuisance in 2002. are causing a public nuisance in 2002. Because this request is b ininin this case, and because Plaintiff has supplied no proof that it needs this belated data request, Plaintiff s fishing expedition of JERRY S individual sales data should be denied.

Respectfully,Respectfully, Plaintiff s Respectfully, Plaintiff s requestRespectfully, Plaintiff s request Re salessales data from the JERRY S defendantssales data from the JERRY S defendants for any period, including the entirety.

Respectfully submitted,

James P. Tenney (JT 4973)